IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision: 08.1.2007

Crl.A.No.99-SB of 1996

Sita Ram

…..Appellant

v.

State of Haryana

…….Respondent

Crl.A.No.167 DBA of 1997

State of Haryana

…..Appellant

v.

Sita Ram and others

…..Respondents

CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL
HON'BLE MR. JUSTICE H.S.BHALLA

Present: Ms. Tanu Bedi, Advocate, for the appellant Sita Ram.

Mr. P.S.Sullar, DAG, Haryana.

Mr. JS Yadav, Advocate for respondent Nos. 2 to 5 in Crl.A.No.167 DBA/1997..

JUDGMENT:

This judgment will dispose of Criminal Appeal No.99 SB of 1996 filed by accused Sita Ram against his conviction under section 304 Part II IPC and sentence of RI for seven years and fine of Rs.2000/-, in default, further RI for one year and Criminal Appeal No.167-DBA of 1997 filed by the State against Sita Ram on the ground that he should have been convicted under section 302 IPC and against his co-accused Ajit Singh, Desh Raj, Satyavir and Karan Singh, who have been acquitted by the trial court. Both the appeals have arisen out of a common order of the trial court.

FIR Ex.PH/1 was registered as per statement of PW-10 Ram Niwas, Ex.PH, recorded by Inspector Gurdeep Singh, PW-16, to the effect that he was running a General store near Petrol Pump Nasibpur. On 14.5.1993 at 9 PM, he alongwith his nephew Umed Singh, Rajnish and Sahi Ram had gone to see a picture in Mohini theatre which ended at 12.30 in the night. When they were returning, they met some other persons who were also returning after seeing the film near Neemri crossing. The said persons included the accused persons and Bhobat Ram, Rajesh, Satyapal, Mangal Ram, Nihal Singh and Lila Ram. The said persons adopted a different path when they reached last corner of Power House, while Ram Niwas and his companions were going on the pucca road. After covering a distance of about 100 years, they heard a noise of quarrel from the passage leading to village Nooni at 1.15 AM and at a distance of 125 yards, they found accused Ajit Singh carrying a 'Bankri', Sita Ram carrying a knife, Desh Raj carrying a cycle chain and an iron rod and Satyavir a 'Chiria' of electric pole, Karan Singh a 'kulhari' while Bhobat Ram , Rajesh and Satyapal were

empty handed. They were abusing Mangal Ram, Nihal Singh and Lila Ram. Lila Ram and Sita Ram were grappling with each other over some money dispute. Umed Singh went near them to separate them on which Sita Ram left Lila Ram and abused Umed Singh. Ajit Singh, Desh Raj, Satyavir, Karan Singh, Bhobat Ram, Rajesh and Satyapal also started abusing the complainant party. Sita Ram took out knife from his waist and gave a blow in the stomach of Umed Singh who fell down and became unconscious. Desh Raj gave a blow of iron rod on the eye of Mangal Ram and another blow on shoulder. Ajit Singh gave 'Bankri' blow on the forehead of Nihal Singh. Karan Singh gave a 'kulhari' blow on the head of Lila Ram and another blow with the handle of 'kulhari' on the chin. Satyavir hit Nihal Singh with his 'chiria'. Bhobat Ram, Rajesh and Satyapal remained standing, abusing and exhorting others to cause injuries. Thereafter, they left with their weapons. Marru Ram, son of Bhakhtawar Singh Saini came there. Umed Singh was put in the cart of Marru Ram and taken to the hospital for treatment where he died.

The statement was recorded in the hospital where the Inspector went on receiving message (Ruqa), Ex.PC. The statement was recorded at 4.50 AM and was sent to police station where FIR was registered at 5.15 AM. Inquest report Ex.PY was prepared and dead body was sent for autopsy vide application Ex.PZ. The Investigating Officer Gurdeep Singh took into possession clothes of the deceased vide Ex.PAA, prepared rough site plan, Ex.PBB, lifted blood stained earth, vide Ex.PR and arrested the accused. Charge was framed against Sita Ram, accused under sections 148, 302 and 323/149 IPC, while against other accused, charge was framed under sections 148/302/149 and 323/149 IPC.

Prosecution examined 16 witnesses. PW-1 HC Nathu Ram, PW-3,

Constable Bhupinder Singh, PW-5 HC Chander Pal and PW-6 Constable Bile Singh proved their respective affidavits Exts. PA, PG, PJ and PK respectively.

PW-2 Dr. Deepak Parkash medically examined Umed Singh,deceased at 2.20 AM on 15.5.1993 and found a punctured wound measuring 2 cm x 5 cm of which depth could not be ascertained, situated on the right side of upper abdomen just below the right coastal margin, vertical in direction, with marks of fresh bleeding caused by sharp pointed object within a duration of six hours. Ex.PB is a copy of MLR prepared by the said witness. He also sent ruqa Ex.PC to police station at 3 AM. He also examined Nihal Singh at 3 AM and found following three injuries on him:-

"1. There was an incised wound of the size of 3 cm x 5 cm x scalp deep, situated on the left frontal region of skull just away from the midline, with marks of fresh bleeding X-ray of skull was advised.

2. There was an abrasion on the right flank with no tenderness. It was of the size of 2 x 1 cm and marks of fresh bleeding were present.

3. A contusion haemotoma on the tip and dorsum of left thumb. There was no tenderness and no restriction of any movement."

He also examined Lila Ram at 2.35 AM and found following injuries on him:-

1. "There was a small punctured wound measuring 1 cm x . 5 cm on the left parietal region of skull, with marks of fresh bleeding. X-ray of skull was advised.

2. There was a small abrasion on the left side of chin."

He also examined Mangal Ram at 3.15 AM and found following injuries:-

1. There was diffused swelling on the right side of face, with no external mark of injury. Overline skin was reddish. There was no tenderness and no injury in the mouth was found.

2. He was complaining of pain on the left side of the shoulder. On examination, there was no external mark of injuries. There was no swelling and no restriction of movements."

PW-4 SI Hari Ram proved recording of FIR. PW-7 Shiv Lal Patwari was examined to prove site plan Ex.PL. PW-8 Kanwar Singh, Sarpanch was a witness to the recovery of ticket Ex.P.2 from the pocket of deceased. PW-9 Balbir Singh is a witness to the recovery of disclosure statement Ex.PN followed by recovery of weapons.

PW-10 Ram Niwas supported the version given in the FIR. PW-11 Nihal Singh corroborated the version given by Ram Niwas.

PW-12 Dr. AK Chhakkar conducted post mortem examination of the deceased on 15.5.1993 at 4 PM and according to him, death was as a result of injury No.3 which was sufficient in the ordinary course of nature and all the injuries were ante-mortem. The said injury was described as under:-

"There was a stabbed wound 2 cm x 0.5 cm x 6 cm. Edges of the wound were clean out and even. It was vertical in direction. The underlying right lobe of the liver was having wound 2 cm x 4 cm deep. Blood clot was present under the base of liver and abdominal cavity was full of blood. The injury was situated on the skin just below the right coastal line."

PW-13 Lila Ram also supported the version given in the FIR. PW-14 SI Chhaju Ram proved the disclosure statement and recoveries. PW-15 Kartar Singh, Patwari proved the site plan Ex.PV.

Learned trial court held the case of the prosecution to be proved

beyond reasonable doubt by recording following findings:-

(i) There was no inordinately long delay in lodging the FIR. Occurrence had taken place at 1.15 AM. Ruqa was sent to police station at 3 AM. The Investigating Officer recorded the statement of Ram Niwas at 4.50 A.M. and FIR was registered at 5.15 A.M. and the same was delivered to the CJM at 7.30 AM.

(ii) There was no dispute about presence of Lila Ram, PW-13 and Nihal Singh, PW-11 at the place of occurrence as they were having injuries found by Dr. Deepak Parkash,PW-2.

(iii) Version of the prosecution about causing of stab injury with the knife in the stomach of the deceased by Sita Ram was fully proved by deposition of PW-10 Ram Niwas, PW-11Nihal Singh and PW-13 Lila Ram, whose testimonies were consistent and were also corroborated by the FIR which was promptly recorded. There was no motive to falsely implicate the accused. Medical evidence also corroborated the said version.

(iv) Having regard to the fact that Sita Ram had no motive to assault Umed Singh and had only inflicted one injury, the case would fall under section 304 Part II. He had no intention to cause death or the particular injury but he could be attributed the knowledge that such an injury could result. Occurrence took place in the heat of altercation. The prosecution version was that the accused party as well as complainant party were returning from the cinema and suddenly fight took place. The accused could not be having the weapons nor they could be having common intention. Sita Ram caused the fatal assault on Umed Singh who tried to intervene on a spur of moment. In these circumstances, Ajit Singh, Des Raj, Satpal and Karan Singh were entitled to benefit of doubt.

Taking up the appeal of Sita Ram accused, only contention raised by the learned counsel is that since the version of PW 10 Ram Niwas, PW11 Nihal Singh and PW13 Lila Ram had not been accepted qua the acquitted accused, the case of the prosuection qua the appellant Sita Ram, appellant could not be held to have been proved. It was also submitted that Sita Ram

could not be attributed knowledge of fatal blow. It was also submitted that ocular version was not consistent with the medical evidence as the knife Ex.P.1 was not sharp from both sides, while according to medical evidence, injury was by a weapon which may be sharp from both sides. .

Learned counsel for the State opposed the contention raised and submitted that there was direct evidence of three eye witnesses which was consistent and independent. There was no previous enmity. FIR was promptly lodged. Death was direct result of the injury caused by the appellant and merely because other accused were given benefit of doubt was no ground for not believing the version of the prosecution qua appellant Sita Ram.

After considering the rival submissions and perusing the entire evidence, we do not find any merit in the appeal filed by Sita Ram. Case of the prosecution has been fully proved by the direct evidence of PW-10 Ram Niwas who is an eye witness and whose version has been fully corroborated by Lila Ram, PW-13, as well as Nihal Singh, PW-11 who are also injured eye witnesses. SI Chhaju Ram, PW-14 proved the recovery of the weapon at the instance of the accused, which has been corroborated by PW-9, Balbir Singh. There is no reason whatsoever to discard the direct testimony of the eye witnesses which is further corroborated by medical evidence. Appeal filed by Sita Ram is, thus, liable to be dismissed.

Coming to the appeal filed by the State, we have perused the reasons given by the trial court for acquittal in para 13 to 16 of its judgment for holding that other accused had no common intention for their vicarious liability for the act of Sita Ram, co-accused and that there did not appear to be probability of their carrying weapons when they had gone to see a picture. We do not find the said reasons to be unreasonable or perverse so as to call for interference with the order of acquittal.

As regards the contention that Sita Ram, accused should have been convicted under section 302 IPC and not under section 304 Part II IPC, following factors have been noticed by the trial court in para 18 of its judgment:-

(i) Sita Ram, accused had no motive and no previous enmity.

(ii) He inflicted one stab injury on the person of Umed Singh when he tried to intervene to separate Sita Ram and Lila Ram.

(iii) Occurrence took place in the heat of altercation.

There is no doubt that even if there is no intention to cause death, case can fall under section 300 if there is intention to cause bodily injury, which is sufficient in the ordinary course of nature to cause death or the offender knows to be likely to cause death or so imminently dangerous that it must, in all probability, cause death. However, there may be a case of sudden fight where it may be held that injury which caused the death was not intended to be inflicted, though knowledge of such an injury being inflicted can be attributed to the author of the injury. Reference may be made to the judgment of the Hon'ble Supreme Court in **Bhojappa Hanamanthappa Choudannavar v. State of Karnataka**, (2004) 10 SCC 177, wherein it was observed:-

> "3. A commotion took place in front of the house of Bhimappa (PW 1) during the night of 10-9-1984. The appellant and his co-accused were involved in assaulting Bhimappa and his brothers-in-law. While the brawl was in full swing PW 1s daughter Renu Kavva, a twelve-year-old little girl, rushed to the scene presumably to rescue her father whom she would have thought to be in a dangerous situation. The appellant herein then swished a wooden hammer he was then possessed with, which hit on the head of Renu Kavva, which unfortunately turned out to be fatal. Therefore, the High Court, on the appeal against acquittal, found that the appellant did not intend to inflict the injury which caused her death. We are in agreement with the finding of the High Court that the offence is only under Section 304 Part II IPC.

In view of above, decision has to be taken from case to case whether having regard to peculiar facts of a particular case, case falls under section 300 or not and whether any of the exceptions is attracted. In the present case a finding has been recorded that when Umed Singh tried to intervene to separate Sita Ram and Lila Ram, suddenly Sita Ram caused the injury and it was not clear that he intended to inflict the said injury. Having regard to the finding recorded by the trial court on the facts of the present case, we are unable to hold that the same is perverse. Even if two views are possible, we are of the view that no interference is called for with the finding recorded.

Approach in dealing with an appeal against acquittal is well-settled. The

Hon'ble Supreme Court **Ajit Savant Majagavi Vs.State of Karnataka AIR 1997 Supreme Court 3255,** reiterated the said principles as under:-

"13. There was quite a controversy among the Courts with considerable divergence of judicial opinion as to the scope of appeal against an order of acquittal. This controversy remained unabated till some guideline was indicated by the Privy Council in Sheo Swarup V. King Emperor (1934) 61 Ind App 398 : AIR 1934 PC 227 (2). This decision was considered in Sanwat Singh Vs. State of Rajasthan (1961) 3 SCR 120 : (AIR 1961 SC 715), in which the legal position was explained by this Court as under:-

> (1) The evidence upon which the order of acquittal was passed by the trial Court can be reviewed, reappreciated and reappraised by the Appellate Court.
>
> (2) The principles laid down by the Privy Council Sheo Swarup V. King Emperor, LR 61 Indian Appeals 398 (Supra) provide correct guidelines for the Appellate Court while disposing of the appeal against the order of acquittal.
>
> (3) The words "substantial and compelling reasons", good and sufficiently cogent reasons" or "strong reasons" used by this Court in its various judgments do not have the effect of curtailing power of the High Court to reconsider, review or scrutinise the entire evidence on record so as to come to its own conclusions in deciding the appeal against an order of acquittal.

14. As a matter of fact, the powers of the High Court are not different from its powers in an ordinary appeal against conviction. The additional burden which is placed on the High Court is that it has to consider each of the grounds which had prompted the trial Court to pass the order of acquittal and to record its own reasons for not agreeing with the trial Court.

15. In State of Uttar Pradesh Vs. Samman Das, AIR 1972 SC 677 : (1972) 3 SCR 58, this Court again reiterated the above principles and pointed out that there were certain

cardinal rules which had alaways to be kept inview in appeal against acquittal. It was pointed out that there is a presumption of innocence in favour of the accused especially when he has been acquitted by the trial Court. It was further to be kept in view that if two views of the matter are possible, the view which favours the accused has to be adopted. The Appellate Court has also to keep in view the fact that the trial judge had the advantage of looking at the demeanour of witnesses and that the accused is still entitled to the benefit of doubt. The doubt should be such as a rational thinking person will reasonably, honestly and conscientiously entertain and not the doubt of an irrational mind. [See also : Sohrab Vs. State of Madhya Pradesh, (1973) 1 SCR 472; (1972) 3 SCC 751: AIR 1972 SC 2020; Ediga Sanjanna V. State of Andhra Pradesh, (1976) 2 SCC 210 :(AIR 1977 SC 785) : Satbir Singh V. State of Punjab, (1977) 3 SCR 195 : (1977) 2 SCC 263 : (AIR 1977 SC 1294); Chandrakanta Devnath Vs. State of Tripura (1986) 1 SCC 549; 1986 Cri L.J. 809: (AIR 1986 SC 606); G.B.Patel V.State of Maharasthra, AIR 1979 SC 135; Awadesh V.State of Madhya Pradesh, (1988) 3 SCR 513 : (1988) 2 SCC 557 : (AIR 1988 SC 1158) ; Anokh Singh Vs. State of Punjab, 1992 (Supp) 1 SCC 426 : (1992 AIR SCW 235); Gajanan Amrut Gaykwad V. State of Maharashtra 1995(supp) 3 SCC 607:(1996 AIR SCW 2665); Ram Kumar V. State of Haryana, AIR 1995 SC 280: (1994 AIR SCW 4441): Betal Singh V. State of Madhya Pradhesh (1996) 4 SCC 2031].

16. This Court has thus explicitly and clearly laid down the principles which would govern and regulate the hearing of appeal by the High Court against an order of acquittal passed by the trial Court. These principles have been set out in innumerable cases and may be reiterated as under:-

(1) In an appeal against an order of acquittal, the High Court possesses all the powers, and nothing less than the powers, it possesses while hearing an appeal against an order of conviction.

(2) The High Court has the power to

reconsider the whole issue, reappraise the evidence and come to its own conclusion and findings in place of the findings recorded by the trial Court, if the said findings are against the weight of the evidence on record, or in other words, perverse.

(3) Before reversing the finding of acquittal, the High Court has to consider each ground on which the order of acquittal was based and to record its own reasons for not accepting those grounds and not subscribing to the view expressed by the trial Court that the accused is entitled to acquittal.

(4) In reversing the finding of acquittal, the High Court has to keep in view the fact that the presumption of innocence is still available in favour of the accused and the same stands fortified and strengthened by the order of acquittal passed in his favour by the trial Court.

(5) If the High Court, on a fresh scrutiny and reappraisal of the evidence and other material on record, is of the opinion that there is another view which can be reasonably taken, then the view which favours the accused should be adopted.

(6) The High Court has also to keep in mind that the trial Court had the advantage of looking at the demeanour of witnesses and observing their conduct in the Court especially in the witness box.

The High Court has also to keep in mind that even at that stage, the accused was entitled to benefit of doubt. The doubt should be such as a reasonable person would honestly and conscientiously entertain as to the guilt of the accused."

In **Jaswant Singh v. State of Haryana, AIR 2000 SC 1833,** the Supreme Court observed as under:-

"21**.** The principle to be followed by appellate courts considering an appeal against an order of acquittal is to interfere only when there are compelling and substantial reasons for doing so. If the

order is clearly unreasonable it is a compelling reason for interference (see *Shivaji Sahabrao Bobade* v. *State of Maharashtra,* (1973 Cri LJ 1783)). The principle was elucidated in *Ramesh Babulal Doshi* v. *State of Gujarat,* (1996) 9 SCC 225: 1996 AIR SCW 2438: AIR 1996 SC 2035 (1996) Cri LJ 2867):

> "While sitting in judgment over an acquittal the appellate court is first required to seek an answer to the question whether the findings of the trial court are palpably wrong, manifestly erroneous or demonstrably unsustainable. If the appellate court answers the above question in the negative the order of acquittal is not to be disturbed. Conversely, if the appellate court holds, for reasons to be recorded, that the order of acquittal cannot at all be sustained in view of any of the above infirmities it can then and then only reappraise the evidence to arrive at its own conclusions.

(See also *George* v. *State of Kerala,* (1998) Cri LJ 2034: 1998 AIR SCW 1255: (AIR 1998 SC 1376).]."

In **Budh Singh and others Vs. State of U.P. (2006) 9 Supreme Court Cases 731,** it was observed :-

> "Before adverting to the rival contentions of the parties, it will be beneficial to remind ourselves about the established principle of law that the High Court does not ordinarily set aside a judgment of acquittal in a case where two views are possible, although, the view of the appellate court is a more probable one. It is, however, true that the High Court, while dealing with a judgment of acquittal, is free to consider the entire evidence on record so as to arrive at a finding as to whether the views of the trial Judge are perverse or otherwise bad in law. The appellate court shall also be entitled to take into consideration as to whether in arriving at a finding of fact, the trial Judge has failed to take into consideration admissible evidence and has taken into consideration evidence brought on record contrary to law. Similarly, wrong placing of burden of proof may also be a subject matter of the scrutiny by the appellate court.

10. In Balak Ram Vs. State of U.P. this Court has held :

(scc P. 236, para 59).

> "59 The aforesaid discussion of the various items of evidence must at least yield the result that the conclusion to which the learned Sessions Judge came was a reasonable conclusion to come to. It cannot be denied that two views of the evidence are reasonably possible in regard to the participation of Nathoo, Dr. Kohli and Banney Khan. The High Court, therefore, ought not to have interfered with the judgment of the Sessions Court in their favour."

11. In Shamhoo Missir v. State of Bihar it was held: (SCC pp.20-21, para 6)

> "6. The High Court did not deal with any of these circumstances pointed out by the trial court and has given no reasons to negative them or to show as to how they were either improper, unjustified or unreasonable. We are, therefore, of the view that the High Court has interfered with the order of acquittal passed by the trial court not only for no substantial reasons but also by ignoring material infirmities in the prosecution case."

12. Yet again in Shailendra Pratap v. State of U.P. the law was laid down in the following terms: (SCC p. 766, para 8)

"8. Having heard learned counsel appearing on behalf of the parties, we are of the opinion that the trial court was quite justified in acquitting the appellants of the charges as the view taken by it was a reasonable one and the order of acquittal cannot be said to be perverse. It is well settled that the appellate court would not be justified in interfering with the order of acquittal unless the same is found to be perverse. In the present case, the High Court has committed an error in interfering with the order of acquittal of the appellants recorded by the trial court as the same did not suffer from the vice of perversity."

13. In Narendra Singh v. State of M.P., wherein one of

us (Sinha, J.) was a party, it was categorically held that the Court must bear in mind the presumption of innocence of the accused in setting the law. The said view has been reiterated in Ranjitsing Brahmajeetsing Sharma v. State of Maharashtra in the following terms: (SCC p. 316, para 35)

> "35. Presumption of innocence is a human right. (See Narendra Singh v. State of M.P. , SCC Para 31.) Article 21 in view of its expansive meaning not only protects life and liberty but also envisages a fair procedure. Liberty of a person should not ordinarily be interfered with unless there exist cogent grounds therefore. Sub-section (4) of Section 21 must be interpreted keeping in view the aforementioned salutary principles. Giving an opportunity to the Public Prosecutor to oppose an application for release of an accused appears to be reasonable restriction but clause (b) of sub-section (4) of Section 21 must be given a proper meaning."

Applying the above principles to the present case, we are unable to hold that there are any compelling or substantial reasons to interfere with the order of acquittal.

Accordingly, the appeal filed by the State is also liable to be dismissed.

For the above reasons, both the appeals are dismissed.

(Adarsh Kumar Goel)

Judge

(H.S.Bhalla)

Judge

January 8, 2007

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